

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE
KENT COUNTY COURTHOUSE
DOVER, DELAWARE 19901
PHONE: (302) 739-4618**

**CHARLES W. WELCH, III
JUDGE**

August 3, 2010

Christopher J. Curtin, Esq.
Macelree Harvey, Ltd.
5721 Kennett Pike
Centreville, DE 19807

Gregory A. Morris, Esq.
Liguori & Morris
46 The Green
Dover, DE 19901

Kashif I. Chowdry, Esq.
Parkowski, Guerke & Swayze, P.A.
116 W. Water Street
P.O. Box 598
Dover, DE 19903

RE: Kenneth J. Gibson, Jr. and Kimberly Gibson v. Car Zone, et al
C. A. No.: CPU5-09-002812

Decision on Appeal of the Justice of the Peace Court's Denial of Appellant's
Motion to Reopen Pursuant to J.P. Civ. R. 60(b)

Dear Mr. Curtin, Mr. Morris and Mr. Chowdry:

Appellants, Plaintiffs-Below, Kenneth and Kimberly Gibson ("Plaintiffs"), are appealing the Justice of the Peace Court's November 10, 2009, denial of their Motion to Reopen the original Order granting a directed verdict to the defendants at trial on May 15, 2007. After a careful review of the lower-court's ruling and the parties' arguments pursuant to *Ney v. Polite*, 399 A.2d 527 (Del. 1979), this is the Court's decision. The decision of the Justice of the Peace Court denying the plaintiffs' Motion to Reopen is affirmed.

In October 2006, the plaintiffs filed a civil suit against Appellees, Defendants-Below, Car Zone and Security National ("Defendants"), alleging that the vehicle they purchased had been subject to flood damage. The defendants denied the allegations and

filed a counterclaim. A trial was held in the Justice of the Peace Court on May 15, 2007, and the court ruled in favor of the defendants. The plaintiffs failed to file a timely appeal of the Justice of the Peace Court's decision with this Court. After a failed attempt to file an identical action in the Court of Common Pleas in New Castle County, the plaintiffs filed a Motion to Reopen the original Justice of the Peace Court case pursuant to Justice of the Peace Civil Rule 60(b). On November 10, 2009, the Justice of the Peace Court denied the plaintiffs' motion.

Plaintiffs contend that the Justice of the Peace Court abused its discretion in denying their Motion to Reopen pursuant to Rule 60(b). They maintain that the court was misled by the defendants' counsel concerning the law, and as a result, the judgment was not based on the correct law and facts of the case.

When reviewing a Justice of the Peace Court's ruling for abuse of discretion, this Court determines whether the decision "is a product of logic, based upon the facts and reasonable deductions to be drawn therefrom." *Hurd v. Smith*, 2009 WL 1610516, at *2 (Del. Com. Pl.). A reviewing court may not substitute its own discretion for that of the lower court. *Id.* Only judgments that are manifestly unreasonable, capricious, or not based on recognized rules of law or practice are considered an abuse of discretion. *Id.*

Justice of the Peace Civil Rule 60(b) grants the court-below the discretion to relieve a party from a judgment upon a showing of mistake, inadvertence, excusable neglect, newly discovered evidence, or fraud. In its order denying relief, the Justice of the Peace Court held that granting the plaintiffs a new trial under Rule 60(b) would be improper.

The court-below reviewed the parties' briefs and heard oral arguments. It held that the plaintiffs had every opportunity to present their case and that defense counsel had committed no fraud upon the court or upon the plaintiffs. I find that the lower court's

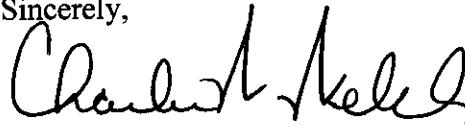
Page Three
August 3, 2010

ruling is supported by the facts of this case and the law. Therefore, the trial judge below did not abuse his discretion.

The Court finds, as did the court-below, that the plaintiffs are attempting to use Rule 60(b) as a substitute for the appeal process. The plaintiffs' failure to file a timely appeal of the trial court's decision may not be circumvented through a Rule 60(b) motion. *Dixon v. Delaware Olds*, 405 A.2d 117, 119 (Del. 1979). The judgment of the Justice of the Peace Court is affirmed. Defense counsel's request for attorney's fees is denied.

IT IS SO ORDERED.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Welch, III". The signature is fluid and cursive, with the first name "Charles" being the most prominent part.

Charles W. Welch, III

CWW:mek